

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

NO. 5:11-CT-3208-FL

KEITH JAMES SEARS,)
)
Plaintiff,)
)
v.) ORDER
)
DEBRA PRICE; BERNARD P.)
CONDLIN; SUE GENRICH BERRY;)
DEE W. BRAY; ALLISON)
STANDARD; BRUCE T.)
CUNNINGHAM, JR. THE)
MUNICIPALITY OF CUMBERLAND)
COUNTY; THE CITY OF)
FAYETTEVILLE; CUMBERLAND)
COUNTY JAIL HEALTHCARE;)
CUMBERLAND COUNTY JAIL'S)
HEALTH AND DENTAL CARE)
PROVIDERS; JOHN DOE DOCTOR;)
MAJOR J. MCRAINEY; CAPTAIN J.)
TYNDALL; SERGEANT ADRIENNE)
DENISE TAPPS; AND JOHN DOE)
DENTIST,)
)
Defendants.)

This matter comes before the court on the motion for summary judgment (DE # 52) and motion to withdraw as attorney (DE # 161) filed by defendant the City of Fayetteville. Also before the court are plaintiff's motion for an extension of time to consult with newly appointed counsel (DE # 131), motion to appoint counsel (DE # 133), motion for alternative appointment of counsel (DE # 156), and motion to substitute attorney (DE # 160). Plaintiff responded to the City of Fayetteville's motion to withdraw as attorney, to which the City of Fayetteville replied. No defendant responded

to plaintiff's motions.¹ In this posture, the issues raised are ripe for adjudication. The court rules as follows.

BACKGROUND

On October 3, 2011, the City of Fayetteville filed a motion to dismiss pursuant to Federal Rules of Civil Procedure 12(b)(1), (b)(2), and (b)(6), which was fully briefed. On March 16, 2012, the court entered an order in which it, *inter alia*, converted the City of Fayetteville's motion to dismiss into a motion for summary judgment because the City of Fayetteville submitted an affidavit that was outside of the pleadings. The court also directed the Clerk of Court to issue a Rule 56 letter and allowed the parties the opportunity to respond in accordance with this court's local rules of practice and procedure.

On March 28, 2012, plaintiff filed a response to this court's March 16, 2012, order, requesting, *inter alia*, an extension of time to respond to the City of Fayetteville's motion for summary judgment. Plaintiff subsequently filed a second request for an extension of time. Both requests for an extension of time seek additional time in order for plaintiff to consult with his newly appointed counsel. On March 30, 2012, North Carolina Prisoner Legal Services ("NCPLS") attorney April Marie Giancola entered a notice of appearance on behalf of plaintiff. Plaintiff, thereafter, filed a motion to appoint counsel and a motion for appointment of alternative counsel.

On May 9, 2012, attorney James Thorton filed a notice of appearance on behalf of the City of Fayetteville.² On May 10, 2012, NCPLS attorney Michele Luecking-Sunman filed a motion for

¹ The court notes that the City of Fayetteville expressed opposition to plaintiff's motion for an extension of time to respond to its motion for summary judgment in its reply in support of its motion to withdraw.

² Attorney Brian Leonard previously filed a notice of appearance on behalf of the City of Fayetteville on October 3, 2011.

substitution of counsel. Finally, on May 11, 2012, attorney Brian Leonard (“Leonard”) filed a motion to withdraw, which was fully briefed.

DISCUSSION

A. Motion to Substitute Attorney

Attorney Michele Luecking-Sunman requests that the court substitute her as the lead attorney for plaintiff in this action on the grounds that current lead attorney April M. Giancola left NCPLS and no longer will work on this case. For good cause shown, the motion is GRANTED. The Clerk of Court is DIRECTED to substitute Michele Luecking-Sunman for April M. Giancola as the lead attorney in this action. The Clerk further is DIRECTED to terminate April M. Giancola as attorney of record and discontinue her electronic notification in this matter.

B. Motion for Extension of Time

Plaintiff requests an extension of time to respond to the City of Fayetteville’s motion for summary judgment in order to consult with his newly appointed counsel. For good cause shown, plaintiff’s motion is GRANTED. The court’s docket reflects that NCPLS has entered a notice of appearance on plaintiff’s behalf. Accordingly, plaintiff, through counsel, must file his response to the City of Fayetteville’s motion for summary judgment within twenty-one (21) days of this court’s order.

C. Motion to Appoint Counsel / Motion for Alternative Appointment of Counsel

Plaintiff requests through motions to appoint counsel and for alternative appointment of counsel that new counsel be appointed in this action. In support, plaintiff states that NCPLS has denied him assistance in the past and expresses concern with whether NCPLS has entered a notice of appearance in this action. The docket reflects that plaintiff is represented by NCPLS.

Accordingly, he now has the benefit of competent counsel to assist him in litigating this matter. Plaintiff is cautioned that should he refuse the assistance of NCPLS, the court is not inclined to provide alternative legal assistance. Plaintiff further is cautioned that any future communication with this court should be made through his counsel. Based upon the foregoing, plaintiff's motions to appoint counsel or for alternative appointment of counsel are DENIED.

D. Motion to Withdraw

Brian Leonard moves to withdraw as attorney for the City of Fayetteville on the grounds that he has accepted employment with another organization and no longer will be employed by the City of Fayetteville. For good cause shown, Leonard's motion to withdraw is GRANTED. Accordingly, the Clerk of Court shall terminate Leonard as attorney of record and discontinue his electronic notification in this matter.

CONCLUSION

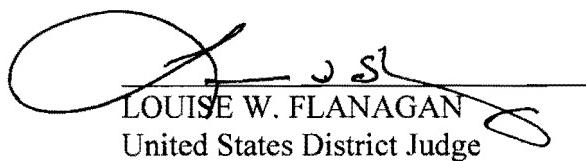
In summary, the court finds:

- (1) Plaintiff's motion for extension of time (DE # 131) is GRANTED. Plaintiff, through counsel, must respond to the City of Fayetteville's motion for summary judgment within twenty-one (21) days of this court's order. Accordingly, the City of Fayetteville's motion for summary judgment (DE # 52) is held in abeyance until the briefing is complete.
- (2) Plaintiff's motion to appoint counsel (DE # 133) and motion for alternative appointment of counsel (DE # 156) are DENIED.
- (3) Plaintiff's motion to substitute attorney (DE # 160) is GRANTED. The Clerk of Court is DIRECTED to substitute Michele Luecking-Sunman for April M. Giancola

as the lead attorney in this action. The Clerk also is DIRECTED to terminate April M. Giancola as attorney of record and discontinue her electronic notification in this action.

- (4) The City of Fayetteville's motion to withdraw as attorney (DE # 161) is GRANTED. The Clerk of Court is DIRECTED to terminate Brian Leonard as attorney of record and discontinue his electronic notification in this matter.

SO ORDERED, this the 1st day of June, 2012.



LOUISE W. FLANAGAN
United States District Judge